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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS-FV-12-0030; FV12-927-1 FR]

Pears Grown in Oregon and Washington; Modification of the Assessment Rate for Fresh Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Fresh Pear Committee (Committee) for the 2012-2013 and subsequent fiscal periods from \$0.366 to \$0.449 per standard box or equivalent of summer/fall pears handled, and decreases the assessment rate from \$0.471 to \$0.449 per standard box or equivalent of fresh winter pears handled. The Committee locally administers the marketing order that regulates the handling of fresh pears grown in Oregon and Washington. Assessments upon Oregon-Washington fresh pear handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington, hereinafter referred to as the "order. "The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon-Washington pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable fresh pears beginning July 1, 2012, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2012-2013 and subsequent fiscal periods from \$0.366 to \$0.449 per standard box or equivalent of summer/fall pears handled, and decreases the assessment rate from \$0.471 to \$0.449 per standard box or equivalent of fresh winter pears handled. The standard box or equivalent assessment rate for "other" fresh pears would remain unchanged at \$0.00.

The Oregon-Washington pear marketing order provides authority for the Committee, with USDA's approval, to formulate an annual budget of expenses and to collect assessments from handlers to administer the fresh pear program. The members of the Committee are producers and handlers of Oregon-Washington fresh pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2011-2012 and subsequent fiscal periods, the Committee recommended, and USDA approved, the following three base rates of assessment: (a) \$0.366 per standard box

or equivalent for any or all varieties or subvarieties of fresh pears classified as "summer/fall"; (b) \$0.471 per standard box or equivalent for any or all varieties or subvarieties of fresh pears classified as "winter"; and (c) \$0.000 per standard box or equivalent for any or all varieties or subvarieties of fresh pears classified as "other". These base rates of assessment would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 31, 2012, and unanimously recommended 2012-2013 expenditures of \$9,166,744. To fund the 2012-2013 expenditures, the Committee also recommended an assessment rate of \$0.449 per standard box or equivalent for both fresh summer/fall and winter pears.

In comparison, last year's budgeted expenditures were \$9,301,960. The fresh summer/fall pear assessment rate of \$0.449 is \$0.083 higher than the rate currently in effect. The fresh winter pear assessment rate of \$0.449 is \$0.022 lower than the rate currently in effect. The Committee recommended increasing the promotion and paid advertising expenditures to market the larger 2012-2013

fresh summer/fall pear crop, estimated at four percent higher than 2011-2012 and the five-year average.

Accordingly, the Committee recommended the higher fresh summer/fall pear assessment rate to fund the increased 2012-2013 promotion and paid advertising expenditures. The Committee estimates that the 2012-2013 fresh winter pear crop will be nine percent lower than 2011-2012.

Consequently, the Committee recommended lower promotion and paid advertising expenditures for marketing the reduced fresh winter pear crop, resulting in a lower assessment rate for 2012-2013.

The major expenditures recommended by the Committee for the 2012-2013 fiscal period include \$450,274 for contracted administration by Pear Bureau Northwest, \$635,500 for production research and market development, \$6,160,000 for promotion and paid advertising for winter pears, and \$1,732,500 for promotion and paid advertising for summer/fall pears. In comparison, major expenses for the 2011-2012 fiscal period included \$437,160 for contracted administration by Pear Bureau Northwest, \$644,800 for production research and market development, \$6,765,000 for promotion and paid advertising for winter

pears, and \$1,290,000 for promotion and paid advertising for summer/fall pears.

The Committee based its recommended assessment rate for fresh pears on the 2012-2013 summer/fall and winter pear crop estimates, the 2012-2013 program expenditure needs, and the current and projected size of its monetary reserve. Applying the \$0.449 per standard box or equivalent assessment rate to the Committee's 4,500,000 standard box or equivalent fresh summer/fall pear crop estimate should provide \$2,020,500 in assessment income. The quantity of assessable fresh winter pears for the 2012-2013 fiscal period is estimated at 16,000,000 standard boxes or equivalent and should provide \$7,184,000 in assessment income. Thus, income derived from winter and summer/fall fresh pear handler assessments (\$9,204,500) and interest and miscellaneous income (\$20,000) will be adequate to cover the recommended \$9,166,774 budget for 2012-2013. The Committee estimates that it will have a monetary reserve of \$1,031,259 on June 30, 2012. During 2012-2013, the Committee estimates that \$57,726 will be added to the reserve for an estimated reserve of \$1,088,985 on June 30, 2013, which will be within the maximum

permitted by the order of approximately one fiscal period's operational expenses (§ 927.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA.

Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2012-2013 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural

Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,580 producers of fresh pears in the regulated production area and approximately 38 handlers of fresh pears subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

According to the Noncitrus Fruits and Nuts 2011 Preliminary Summary issued in March 2012 by the National Agricultural Statistics Service, the total 2011 farm-gate value of all pears grown in Oregon and Washington is estimated at approximately \$275,531,000. Based on the

number of pear producers in Oregon and Washington, the average gross revenue for each producer can be estimated at approximately \$174,387. Furthermore, based on Committee records, the Committee has estimated that 56 percent of Oregon-Washington pear handlers currently ship less than \$7,000,000 worth of fresh pears on an annual basis. From this information, it is concluded that the majority of producers and handlers of Oregon and Washington fresh pears may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2012-2013 and subsequent fiscal periods from \$0.366 to \$0.449 per standard box or equivalent of fresh summer/fall pears handled, and decreases the assessment rate from \$0.471 to \$0.449 per standard box or equivalent of fresh winter pears handled. The Committee unanimously recommended 2012-2013 expenditures of \$9,166,774, and an assessment rate of \$0.449 per standard box or equivalent of fresh summer/fall and winter pears handled. The assessment rate of \$0.449 is \$0.083 higher than the 2011-2012 assessment rate for summer/fall pears, and \$0.022 lower than the 2011-2012 assessment rate for winter pears. The Committee recommended increasing the promotion and paid advertising

expenditures to market the larger 2012-2013 fresh summer/fall pear crop, estimated at four percent higher than 2011-2012 and the five-year average. Accordingly, the Committee recommended the higher fresh summer/fall pear assessment rate to fund the increased 2012-2013 promotion and paid advertising expenditures. The Committee estimates that the 2012-2013 fresh winter pear crop will be nine percent lower than 2011-2012. Consequently, the Committee recommended lower promotion and paid advertising expenditures for marketing the reduced fresh winter pear crop, resulting in a lower assessment rate for 2012-2013.

The quantity of assessable fresh summer/fall pears for the 2012-2013 fiscal period is estimated at 4,500,000 standard boxes or equivalent. Thus, the \$0.449 rate should provide \$2,020,500 in assessment income. Applying the \$0.449 per standard box or equivalent assessment rate to the Committee's 16,000,000 standard boxes or equivalent, the fresh winter pear crop estimate should provide \$7,184,000 in assessment income. Income derived from winter and summer/fall fresh pear handler assessments (\$9,204,500) along with interest and miscellaneous income (\$20,000) will be adequate to cover the budgeted expenses.

The major expenditures recommended by the Committee for the 2012-2013 fiscal period include \$450,274 for contracted administration by Pear Bureau Northwest, \$635,500 for production research and market development, \$6,160,000 for promotion and paid advertising for winter pears, and \$1,732,500 for promotion and paid advertising for summer/fall pears. Budgeted expenses for these items in 2011-2012 were \$437,160, \$644,800, \$6,765,000, and \$1,290,000, respectively.

The Committee discussed alternatives to this rule. Leaving the assessment rate at the 2011-2012 level for summer/fall and winter pears was initially considered, but not recommended. Although considered, the Committee believes that the 2011-2012 assessment level for fresh summer/fall pears would not generate the funds necessary for the promotion and marketing of the larger fresh summer/fall pear crop. As a consequence, increasing it to the level recommended herein was determined as the best alternative. Similarly, the Committee discussed alternatives for the winter pear assessment rate, but concluded that the recommended lower assessment rate should generate enough funds for promotion and marketing of the smaller fresh winter pear crop.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the Oregon-Washington producer price for the 2012-2013 fiscal period could average \$9 per standard box or equivalent of pears. Therefore, the estimated assessment revenue for the 2012-2013 fiscal period as a percentage of total producer revenue is 4.99 percent.

This action modifies the assessment obligation imposed on handlers. While the increase in the summer/fall pear assessment rate may impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. On the other hand, decreasing the winter pear assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Oregon-Washington pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 31, 2012,

meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Oregon-Washington fresh pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities

for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on January 2, 2013 (78 FR 34). The Committee made copies of the proposed rule available to all pear handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending January 14, 2013, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2012-2013 fiscal period began on July 1, 2012, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable pears handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (3) the rule decreases the assessment rate for assessable fresh winter pears; and (4) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 10-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927 - PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 927.236, the introductory text and paragraphs (a) and (b) are revised to read as follows:

§ 927.236 Fresh pear assessment rate.

On and after July 1, 2012, the following base rates of assessment for fresh pears are established for the Fresh Pear Committee:

(a) \$0.449 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as "summer/fall";

(b) \$0.449 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as "winter"; and

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Dated: April 18, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

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